

FERNANDO GUIZAR,)	No. C 05-0557 MMC (PR)
)	
Plaintiff,)	ORDER GRANTING MOTION FOR
)	STAYING CASE; VACATING
)	TO PRO SE PRISONER
v.)	PROGRAM; VACATING
)	SERVICE OF UNSERVED
)	DENYING MOTIONS FOR
J. WOODFORD, et al.,)	OF COUNSEL AND FOR
)	TIME; INSTRUCTIONS
)	
Defendants.)	(Docket Nos. 33, 36, 38)

**ORDER GRANTING MOTION FOR STAY;
STAYING CASE; VACATING REFERRAL
TO PRO SE PRISONER MEDIATION
PROGRAM; VACATING DEADLINE FOR
SERVICE OF UNSERVED DEFENDANTS;
DENYING MOTIONS FOR APPOINTMENT
OF COUNSEL AND FOR EXTENSION OF
TIME; INSTRUCTIONS TO CLERK**

(Docket Nos. 33, 36, 38)

The United States Marshal (“Marshal”) successfully served seven defendants (“the served defendants”), who jointly filed a motion for summary judgment. By order filed

¹Claims against two other defendants, J. Marshall and H. McEnroe, were dismissed for failure to state a cognizable claim for relief.

1 March 27, 2007, the Court denied the motion for summary judgment, finding, inter alia, that
2 defendants are not entitled to qualified immunity. With respect to the five unserved
3 defendants, specifically, Coziahr, Basso, Wohlwend, Pottieger and James, the order provided
4 that if plaintiff failed to either effectuate service upon them or provide the Court with their
5 accurate current location within 30 days, plaintiff's claims against said defendants would be
6 dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.
7 Additionally, by said order, the Court referred the case to Magistrate Judge Nandor Vadas for
8 the purpose of conducting, within 45 days, mediation proceedings pursuant to the Pro Se
9 Prisoner Mediation Program. Thereafter, on April 24, 2007, the served defendants filed a
10 notice of appeal of the Court's March 27, 2007 order denying their motion for summary
11 judgment as to the issue of qualified immunity.

12 Now before the Court are several motions, which the Court addresses below in the
13 order of their filing.

14 1. On April 4, 2007, plaintiff filed a motion for appointment of counsel. Plaintiff's
15 motion is hereby DENIED as there are no exceptional circumstances warranting such
16 appointment. See Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981) (finding no
17 constitutional right to counsel in civil case).

18 2. Concurrently with their appeal, the served defendants filed a motion to stay all
19 proceedings in this action pending resolution of the appeal. An order denying a defendant's
20 motion for summary judgment, although not a final order, nonetheless is immediately
21 appealable where the defendant is a public official asserting a qualified immunity defense
22 and the issue on appeal is whether the undisputed facts show a violation of "clearly
23 established law" as defined for purposes of such defense. Mitchell v. Forsyth, 472 U.S. 511,
24 528 (1985). Once a notice of appeal is filed, the district court loses jurisdiction over the
25 matters that are the subject of the appeal. Natural Res. Def. Council, Inc. v. Southwest
26 Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001). Here, in light of the matters affected by
27 the served defendants' appeal of the March 27, 2007 order, good cause exists to stay all
28 proceedings before this Court until such appeal is resolved.

1 Accordingly, defendant' motion to stay is hereby GRANTED. All proceedings in the
2 above-titled matter are hereby STAYED until the United States Court of Appeals issues its
3 mandate with respect to its decision on defendants' appeal of the March 27, 2007 order. The
4 referral to the Pro Se Prisoner Mediation Program, as well as the deadline for plaintiff to
5 serve or provide the location of the unserved defendants, as ordered on March 27, 2007, are
6 hereby VACATED.


7 3. In light of the stay, plaintiff's motion for an extension of time in which to locate or
8 serve the unserved defendants is hereby DENIED as moot.

9 This order terminates Docket Nos. 33, 36 and 38.

10 The Clerk shall close the file for administrative purposes pending resolution of the
11 appeal.

12 IT IS SO ORDERED.

13 DATED: May 2, 2007

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15 MAXINE M. CHESNEY
16 United States District Judge
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